Chapter 5 Caseload and Challenges

Caseload

5.1 Caseload for the year is summarised below:

- 11,742 enquiries received;
- 4,654 complaints received; and
- 5,023 complaints concluded.

After years of continuous increase in the number of complaints received this year saw a drop in the figure, from 4,661. However, our pace of processing and concluding cases rose to a record high, with 15.6% increase compared with the figure of 4,345 in the previous year.

Fig. 5.1

Equiries and Complaints for the Past Five Years

Year *	Enquiries	Complaints	
		Received	Concluded
2000/01	11,821	3,709	3,476
2001/02 (10 1/2 months)	12,900	3,736	3,790
2002/03	14,298	4,382	4,370
2003/04	12,552	4,661	4,345
2004/05	11,742	4,654	5,023

* *The period of Reporting Year has changed since 2001/02 (see footnote to Table 1).*

Performance Pledges

5.2 We aim to serve our clients on the performance pledges below :

Fig. 5.2

Performance Pledges

Enquiries	**Range in Response Time (depending on complexity)**
By telephone or in person	Immediate - 30 minutes
In writing	5 - 10 working days
Complaints	**Range in Response Time (depending on complexity)**
Acknowledgement / initial assessment	All complaints will be acknowledged and initially screened – 5 - 10 working days
Cases concluded - Cases outside jurisdiction or under restriction - Other cases	 Full reply declining investigation – 10 - 15 working days Full reply concluding the case – 3 - 6 months
Group Visits and Talks	**Response Time**
Requests for guided group visits	Within 5 working days
Requests for outreach talks	Within 10 working days

5.3 Whatever the volume of complaints received, we endeavour to complete processing within our pledges. This year was no exception.

Fig. 5.3

(a) Response Time for Acknowledgement/Initial Assessment

	Response Time		
Year *	Within 5 working days	Within 6-10 working days	More than 10 working days
2000/01	100.0%	0	0
2001/02 (10 1/2 months)	92.7%	5.8%	1.5%
2002/03	77.6%	11.8%	10.6%
2003/04	66.2%	30.7%	3.1%
2004/05	94.0%	4.2%	1.8%

(b) Processing Time for Cases Outside Jurisdiction or Under Restriction

	Response Time		
Year *	Within 10 working days	Within 11-15 working days	More than 15 working days
2000/01	80.8%	18.6%	0.6%
2001/02 (10 1/2 months)	58.9%	37.6%	3.5%
2002/03	60.7%	37.1%	2.2%
2003/04	71.5%	22.1%	6.4%
2004/05	62.6%	34.4%	3.0%

(c) Processing Time for Other Cases Concluded

	Response Time		
Year *	Less than 3 months	Within 3-6 months	More than 6 months
2000/01	50.6%	44.0%	5.4%
2001/02 (10 1/2 months)	52.2%	38.5%	9.3%
2002/03	57.5%	39.7%	2.8%
2003/04	51.1 %	45.7%	3.2%
2004/05	43.3%	53.7%	3.0%

* *The period of Reporting Year has changed since 2001/02 (see footnote to Table 1).*

5.4 The number of completed cases not meeting the performance pledges during the reporting period was 92 (or 3.0%), compared to 78 (or 3.2%) for the previous reporting year. Factors contributing to longer processing time included one or more of the factors below:

(a) highly complex cases necessitating more elaborate investigation process;

(b) voluminous documents (e.g. some running into some hundreds of pages) requiring extra time to examine and distill for relevant information;

(c) new developments or supply of further material emerging mid-stream; and

(d) challenges, by complainants or organisations concerned.

Challenges

5.5 Organisations and complainants occasionally challenge our decisions or actions. While such challenges inevitably prolong the processing time of cases, they do help us keep our procedures and practices under critical scrutiny to ensure that they are proper and reasonable.

Jurisdiction

5.6 In my 2004 Annual Report, I raised the subject of personnel matters. We had a case where the Civil Service Bureau had been processing a discipline case for years with no prospect of concluding it, thus leaving the persons concerned in great anxiety. Aware that personnel matters are outside our jurisdiction, we considered it our duty to serve our clients and so questioned whether even straightforward omissions or delays in personnel matters were out of bounds to us. Legal advice has since confirmed that the Ordinance, as now worded, does preclude our handling any aspect whatsoever, including even inordinate delay in action on personnel matters. This raises the question whether the Ordinance might be unduly restrictive in this respect.

5.7 However, I must abide by the law. Meanwhile, I will continue to explain to complainants who criticise me for not taking up their case of evidently gross maladministration.

5.8 With other cases which I screen out with specific reasons, some complainants just would not accept that their cases fall outside my jurisdiction. Wherever practicable, we redirect them to the appropriate authorities or channels for advice, assistance or redress.

Revived Cases

5.9 From time to time, complainants dissatisfied with our findings or my conclusion raise objections, particularly if their complaints are found to be unsubstantiated. In the reporting period, we received 334 requests for review, compared to 359 for the last year. The decision on the case was varied after review in eight cases, compared to 14 for the last year.

5.10 We treat each and every objection as an appeal. We faithfully review the case for fresh evidence or new angle. Where new information comes to light, we re-open investigation. We endeavour to address all their points in our response.

5.11 Special procedures apply in the handling of revived cases. Whilst an initial investigator will be required to comment on the complainant’s grounds for review, the actual review will be carried out by another investigator or by the Chief Investigation Officer. As a rule, draft replies to requests for review are scrutinised by my Deputy and, as with all initial cases, finally approved by me before issue.

Fig. 5.4

Revived cases

Result \ Reason	New evidence		New perspective		Outside jurisdiction	Total
	Yes	No	Yes	No		
Decision varied	2	–	6	–	–	8
Decision upheld	–	299	–	–	27	326
						334

5.12 However, most complainants seeking a review tend to reiterate their arguments and simply express dissatisfaction over my conclusion. Many were just unhappy not to have their way with the organisation concerned. Our experience shows that in such cases, factors prompting the complainants to seek review may be summarised as follows :

(a) rising expectations of the quality of public services;

(b) an intuitive conviction or their complaints being justified;

(c) misunderstanding, or inadequate knowledge of practices or policies of the organisations under complaint;

(d) an expectation of The Ombudsman advocating only the complainant's cause; and

(e) a desire to put pressure on the organisations concerned.

5.13 Some dissatisfied complainants have raised allegations against individual investigation officers for being biased, incomplete or incompetent. As all investigation reports are subject to my personal approval, such allegations must be seen as complaints against my decisions, not my officers.

5.14 A number of persistent complainants have chosen to vent their discontent and objections by a continuous stream of letters or numerous repeated calls to my staff at different ranks. We understand, and we do sympathise with, their sentiments. However, our primary duty is to establish facts and to ensure fairness to both the complainants and the organisations concerned. This is the spirit and the intent of the ombudsman system. It does not accord with justice or proper use of public resources to enter into endless debate over the same points. As a general rule, we will review on the basis of new evidence or fresh points but we do not respond indefinitely to repeated requests for review of my decision. We certainly do not have the resources or capacity to reply repeatedly to the same case again and again.

Judicial Review

5.15 Apart from asking The Ombudsman to review decisions, individuals or organisations may apply to the court for judicial review. This is a significant provision since, in view of my statutory independence, my decision on a case is final.

5.16 This year, a complainant who remained dissatisfied with my decisions after I had on his request reviewed his case four times, applied

for judicial review on my last review. My decision in question was that the facts and arguments provided by the complainant for my fourth review were essentially a repetition of those presented before; hence, there was nothing I could add or should do.

Representations

5.17 I am required by law to inform organisations, normally in the form of draft investigation reports, of any criticism or adverse remarks against them or their staff. Now and then, organisations raise reservations or even take issue with our observations, especially when the complaints are substantiated. We always provide organisations and their officers ample opportunities to make representations. Such representations from, and at times meetings and hearings with, organisations and officers criticised in our draft investigation reports are common fare for my investigators. Where representations are reasonable, we faithfully incorporate into the final report. Where they cannot be accepted, we still record those comments with our reasons for non-acceptance.

5.18 Occasionally, we find officers criticised by us in dispute with their employer organisations over the issues from which our criticism stems. In such cases, we are particularly cautious in distilling indisputable facts and steer away from internal staff disputes when finalising our conclusions.

Secrecy vs Data Privacy in Evidence Collection

5.19 In the course of our inquiries, organisations may refuse to provide material for our examination, notably on grounds of secrecy or data privacy. Invariably, we explain our statutory right to access any information relevant to a case. I am grateful that generally all organisations do cooperate with my Office, although occasionally with some persuasion.

5.20 As explained in **Chapter 2**, the secrecy code imposed by the Ordinance is the cornerstone of the ombudsman system and enables us to obtain essential information for effective investigation. We also abide by the requirements of the Personal Data (Privacy) Ordinance ("PDPO") and entertain personal data access requests as long as they do not breach our statutory secrecy code. As a rule, for compliance with the secrecy requirement, we cannot accede to requests for copies of documents collected during our investigation, whether or not they contain personal data of the requester. The Privacy Commissioner has accepted this as exempted under section 58(1)(d) of the PDPO.

5.21 In principle, we promote transparency and accountability of administration. However, we have a statutory duty to safeguard the interests of our clients and the need for confidentiality by organisations involved in our inquiries for them to discharge their functions properly. At times, this results in our being criticised by those seeking to access information held by my Office.

Organisational Culture

5.22 In the 2004 Annual Report, I noted that cases concerning the Lands Department indicated some deeper problem with its organisational culture and had raised this personally with the Director of Lands. I am delighted to report that he responded positively. He directed the organisation of a "hub management" workshop for his directorate and other staff, to encourage more proactive initiative to cooperate with other departments and organisations. His Department has since been more forthcoming towards inquiries.

Nomination of Liaison Officers

5.23 In processing complaints, we request heads of the organisations concerned to nominate suitable officers to be our contact for liaison and efficient handling of the case. We generally respect nomination of the department head. Occasionally, we find some of the liaison officers nominated to be not fully conversant with or representative of the views of the organisation. Where this happens, we have to take it up with the top management to ensure that the officers are fully briefed of the organisation's position on the matter. On a couple of occasions, we had later found the nominated liaison officers to have been actually the subject under complaint, resulting in potential or perceived conflict of interest. This is not satisfactory and we have raised with the heads of the departments concerned: e.g. Education and Manpower Bureau and Housing Department.

Our View

5.24 We regard challenge of our views or conclusions as a healthy reminder to heighten our vigilance and to enhance our professionalism. We endeavour to ensure that our investigations are thorough and impartial. We do not bow to pressure, submit to irrationality or aid and abet in personal vendetta. Open administration and quality service, these are what we work for and foster in the public interest.